

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION**

<b>UNITED STATES OF AMERICA,</b>	§	
<b>Plaintiff,</b>	§	
	§	
<b>VS.</b>	§	<b>C.A. NO. C-05-313</b>
	§	
<b>VINCENT M. THOMAS,</b>	§	
<b>Defendant.</b>	§	

**MEMORANDUM AND RECOMMENDATION TO DENY  
PLAINTIFF'S MOTION FOR ENTRY OF DEFAULT JUDGMENT**

Plaintiff United States of America seeks recovery from defendant for defaulting on a student loan guaranteed by the Department of Education (D.E. 1). Defendant Thomas was served with a copy of the complaint on August 27, 2005 (D.E. 3). To date Thomas has not filed an answer. On September 26, 2005, and October 18, 2005, defendant filed motions for default judgment (D.E. 4, 5).

**Applicable Law**

Prior to obtaining a default judgment under Fed. R. Civ. P. 55(b), there must be an entry of default as provided by Rule 55(a). 10A, WRIGHT, MILLER, & KANE, FEDERAL PRACTICE AND PROCEDURE: CIVIL, § 2682 (3d ed. 1998); *see also U.S. v. \$23,000 in U.S. Currency*, 356 F.3d 157, 168 n. 15 (1<sup>st</sup> Cir. 2004); *Franco v. Selective Ins. Co.*, 184 F.3d 4, 8 (1<sup>st</sup> Cir. 1999) (“[i]n federal court, entry of default is a step prior to entry of judgment of default. . .”). Plaintiff has never sought or requested entry of default. Plaintiff’s motions for default judgment are premature.<sup>1</sup>

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<sup>1</sup>Plaintiff’s motion also failed to include (1) a copy of the promissory note which is the subject of this lawsuit; and (2) an affidavit in support of its request for attorneys’ fees.

**RECOMMENDATION**

It is respectfully recommended that plaintiff's motions for default judgment (D.E. 4,5) be denied without prejudice.

Respectfully submitted this 21st day of October, 2005.

  
B. JANICE ELLINGTON  
UNITED STATES MAGISTRATE JUDGE

**NOTICE TO PARTIES**

The Clerk will file this Memorandum and Recommendation and transmit a copy to each party or counsel. Within **TEN (10) DAYS** after being served with a copy of the Memorandum and Recommendation, a party may file with the Clerk and serve on the United States Magistrate Judge and all parties, written objections, pursuant to Fed. R. Civ. P. 72(b), 28 U.S.C. § 636(b)(1)(C) and Article IV, General Order No. 80-5, United States District Court for the Southern District of Texas.

A party's failure to file written objections to the proposed findings, conclusions, and recommendation in a magistrate judge's report and recommendation within TEN (10) DAYS after being served with a copy shall bar that party, except upon grounds of *plain error*, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the district court. Douglass v. United Services Auto Ass'n, 79 F.3d 1415 (5<sup>th</sup> Cir. 1996) (en banc).